

SECONDDAMENDMENT TO

Durham County Interlocal Cooperation Agreement
911 Communications

INTERLOCAL AGREEMENT

FOR THE 911 EMERGENCY COMMUNICATIONS CENTER AND
THE CITY/COUNTY DEPARTMENT OF EMERGENCY COMMUNICATIONS

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This Interlocal Agreement for the 911 Emergency Communications Center and the
City/County Department of Emergency Communications ~~is an amendment to the 911~~
~~Interlocal Cooperation Agreement (henceforth, as modified by this instrument,~~
~~"Agreement") is made~~ between the City of Durham, a North Carolina municipal
corporation (hereinafter "City"), and the County of Durham, a political subdivision of the
State of North Carolina (hereinafter "County"). ~~This Agreement is made pursuant to~~
~~Article 20 of Chapter 160A of the North Carolina General Statutes.~~ This Second
Amendment Agreement is dated, made, and entered into as
of , 2014.

BACKGROUND. THAT WHEREAS, ~~the~~ The City and County entered into the a
"911 Interlocal Cooperation Agreement 911 Communications," dated July 1, 2005, and
amended it with the (hereinafter the "Original Interlocal"); and

THAT WHEREAS, ~~the City and County entered into a~~ "First Amendment to
Interlocal Cooperation Agreement 911 Communications, dated January 1, 2008. This
Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General
Statutes." ~~dates XX ((hereinafter the "First Amendment"));~~ and

WHEREAS, the City and County desire to amend the First Amendment, while
keeping in effect all terms and conditions of the Original Agreement and the First
Amendment not inconsistent with the terms and conditions set forth below.

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NOW THEREFORE, for and in consideration for the mutual covenants and
agreements made herein, the parties agree as follows:

Section I. Purpose.

Interlocal Agreement for the 911 Emergency Communications Center and the City/County Department of Emergency Communications, between the City of Durham and the County of Durham

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The purpose of this Agreement is to provide for (i) the coordination of public safety emergency dispatch operations by the City and County, and (ii) the efficient delivery of emergency services to the citizens of the City and County.

Section II. Definitions.

The words defined in this Section shall have the meanings indicated when used in this Agreement, unless the context requires otherwise.

- A. "Act" means the Public Safety Telephone Act, as set forth in Chapter 62A of the General Statutes of North Carolina.
- B. "Operations Board" means the Durham Emergency Services Operations Board established pursuant to Section V of this Agreement.
- C. "Annual Operating Budget" means the listing of anticipated annual revenues and expenditures of the City/County Department of Emergency Communications submitted to and approved by the Governing Bodies pursuant to Section III of this Agreement.
- D. "Apportionment Ratio" means the ratio prescribed in Section III, Paragraph D herein, for allocating the cost between the City and the County of carrying out this Agreement.
- E. "Board" means the Board of County Commissioners of Durham County.
- F. "City" means the City of Durham.
- G. "Council" means the City Council of the City of Durham.
- H. "County" means the County of Durham.
- I. "Department" means the Durham City/County Department of Emergency Communications created under Section II, Paragraph A of this Agreement.
- J. "Director" means the Director of Emergency Communications, to whom reference is made in Section II, Paragraph B of this Agreement.
- K. "Durham City/County Emergency Communications Center" (DECC) means the PSAP dispatch operations center located on the third floor of the City Police Headquarters Building, the purpose of which is to handle emergency 9-1-1 telephone calls and to dispatch appropriate service providers.
- L. "Governing Bodies" means ~~collectively~~ the Council and Board.

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- M. "Managers" means the City Manager and the County Manager acting jointly.
- N. "Modified Apportionment Ratio" means the comparative contributions (expressed as percentages) of the City and of the County to the Annual Operating Budget, except revenues payable from the 9-1-1 Service Charge Funds.
- O. "PSAP" means "Public Safety Answering Point," or "PSAP" which means the public safety agency that receives an incoming 911 call and dispatches the appropriate public safety agencies to respond to the call.

"Rules of Procedure" means the rules of procedure adopted by the Operations Board pursuant to Section V.B (3).

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- P. "Unanticipated Expenses" means any expense arising under this Agreement for which funds have not been provided in the Annual Operating Budget. By way of illustration and not limitation, an Unanticipated Expense may be a casualty or liability loss for which there is no applicable insurance, or any expense related to an emergency or unanticipated event. The transfer of additional personnel from the City to the Department during the normal Department operations, for the convenience of the City, is not an unanticipated expense.

- Q. "9-1-1 Service Charge Funds" "9-1-1 Service Charge Funds" means all 9-1-1 service-service charges collected by the State of North Carolina pursuant to Chapter 62A of the North Carolina General Statutes and provided to the City for designated emergency communications purposes.

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Section III-H. Administration.

- A. There is hereby established a City-County Emergency Communications Department, which shall consist of the Director and such subordinate employees as the Governing Bodies may provide in the Annual Operating Budget. The Department shall receive information from emergency callers and dispatch appropriate personnel and equipment in response to such calls throughout the City and County. The City shall serve as the Primary PSAP, as that term is defined in G. S. 62A-40, for the City and County. The Office of the Sheriff maintains a separate communications facility. The Sheriff's communication facility will have the capacity to serve as a temporary back-up facility for the DECC. In order for the Office of the Sheriff to properly execute its duties related to emergency communications, necessary and appropriate materials and services shall be provided for these purposes in the Annual Operations Budget of the DECC. Details of the necessary and appropriate materials and services shall be set forth in a separate non-binding Memorandum of

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Understanding between the Department ~~of Emergency Communications~~ and the Office of the Sheriff.

A separate ~~non-binding~~ Memorandum of Understanding shall be set forth between the IT Departments of all members of the Operations Board, which is defined in Section V, so that duties and responsibilities are clearly defined.

- B. There shall be a Director of ~~Emergency Communications~~ the Department, who shall be appointed by the Managers, and who shall act as the administrative head of the Department and supervise the operations of the Department.
- C. The personnel policies and procedures of the City, administered by the City Manager, shall govern the Department.
- D. There shall be such additional personnel employed for operation of the Department as the Governing Bodies may provide in the Annual Operating Budget.
- E. ~~Pursuant to this Agreement, the~~ The Director shall perform the duties of the ~~De~~partment as per the City job description not inconsistent with this Agreement.

Section ~~IV~~ VIII. Financial

- A. The budget and financial procedures of the City shall be followed in carrying out this Agreement.
- B. The City agrees that all revenues received by the City as 9-1-1 Service Charge Funds ~~under the Act~~ shall be maintained in a special revenue fund as prescribed by NCGS §62A—46(d).
- C. The Managers shall ~~meet~~ annually ~~to~~ consider and decide upon the Annual Operating Budget. The Managers shall designate, within the Annual Operating Budget, those expenses which shall be paid from the 9-1-1 Service Charge Funds, subject to NCGS §62A-46(c). The Managers shall submit the Annual Operating Budget to the Council and Board, ~~respectively~~. The Council and Board shall then each consider such Annual Operating Budget and take such action, as each shall deem appropriate. The failure of the Council and Board to agree upon the Annual Operating Budget shall be grounds for terminating this Agreement pursuant to Section IV.B (2).
- D. An Appointment Ratio is hereby established for the purpose of allocating the costs of carrying out this Agreement between the City and County from revenues

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other than the 9-1-1 Service Charge Funds. The Apportionment Ratio shall be 79% to the City and 21% to the County. At the time the City Manager and the County Manager ~~meet each year to~~ consider the Annual Operating Budget of the Department, they shall also review the Apportionment Ratio and jointly recommend to the Governing Bodies any modification of the Apportionment Ratio that they find to be fair and equitable. To the extent practical, the recommended Apportionment Ratio shall reflect the costs of ensuring the availability of emergency communications dispatch services, ~~under this Agreement, within the respective jurisdictions of the City and County. The City Manager and County Manager shall jointly submit their recommendations with respect to the Apportionment Ratio to the Council and Board respectively, and~~ ~~¶~~ The Council and Board shall take such action as each shall deem appropriate. The failure of the Council and Board to agree upon the Apportionment Ratio shall be grounds for terminating this Agreement pursuant to Section IV. B (2). Any modification of the Apportionment Ratio approved by the Council and Board shall be applicable during the next fiscal year.

- E. The expenses of the Annual Operating Budget shall be apportioned between the City and County according to the Apportionment Ratio. All Unanticipated Expenses shall be apportioned between the City and County according to the Modified Apportionment Ratio, as defined in Section II.M, and be approved by the Board ~~of County Commissioners~~ prior to expenditure by the City. In the event of emergency repairs, the City and the County will determine if the current apportionment ratios needs to be modified. If one cannot be agreed to then the current apportionment ratio shall be utilized.
- F. The City shall initially pay all expenses arising under this Agreement subject, however, to reconciliation by the designated City and County staff in the manner prescribed under this Section.
- G. The County shall pay to the City on a monthly basis, in advance, an amount equal to one-twelfth ~~(1/12)~~ of the amount of the Board approved Annual Operating Budget apportioned to the County under Section III, Paragraph E. The amount due from the County to the City, as the County's share of expenses of the Annual Operating Budget, shall be divided into twelve equal monthly payments. The County shall make each payment on the first of each month of the applicable fiscal year.
- H. Between August 15 and August 31 of each year, ¶ the Finance Director of the City or ~~his~~ designee and the Chief Financial Officer (CFO) of the County or ~~his~~ designee (hereafter "Finance Directors") shall ~~meet and conduct a review of the actual expenditures~~ determine how much, if any, the County has overpaid or underpaid the amounts due to the City under this Agreement for the preceding fiscal year. and a reconciliation of actual amounts remitted by the County to the County's apportionment of actual expenditures under this Agreement. Within 30 days after their determination of the amount, they shall report that determination

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~~to Managers and the City or County shall make the payment to the other party that the determination found to be proper. Any adjustments or payments as may be necessary to effectuate the review and reconciliation agreed upon by the Finance Directors shall be made within 30 days after agreement. . This annual reconciliation shall be performed between August 15 and August 31st for the preceding fiscal year. Results of the reconciliation shall be reported to the Managers within 30 days of the reconciliation being completed.~~

- I. Either the City or County may ~~fund request that the DECC perform~~ services over and above those approved in the Annual Operating Budget. When such additional services are requested by ~~either~~ the City or County ~~but not both~~, and are performed for the benefit of the requesting government then the requesting government shall pay the full expense associated with such service(s) within 30 days of receiving an invoice, and such amounts shall *not* be included in the reconciliation described in this Section. Services over and above those approved in the Annual Operating Budget shall be reported to the Managers.

Section ~~VIII~~V. General Terms of Agreement.

- A. Amendment. This Agreement may be amended upon mutual agreement of the Governing Bodies expressed in writing. The Agreement shall be reviewed by the Governing Bodies at least once every four (4) years and such review shall be documented in writing.
- B. Termination. ~~Either the City or the County may terminate this Agreement in the following manner pursuant to Subsection 1 or 2:~~
1. This Agreement may ~~only~~ be terminated as of the end of any fiscal year, except as provided by Sub~~section~~paragraph ~~(2) of this Section~~. Notice to terminate must be given in writing to the other party on or before January 1st immediately preceding the proposed June 30th termination date.
 2. This Agreement may also be terminated by either party upon ~~thirty (30) days prior~~ written notice to the other party in the event (i) the City and County are unable to agree upon an Annual Operating Budget, (ii) the City and County are unable to agree upon the Apportionment Ratio, or (iii) the Managers are unable to agree with respect to any of the matters prescribed in Section II, ~~Paragraph B~~.
- C. The term of this Agreement shall terminate at 11:59PM on June 30, 2018 unless terminated earlier as prescribed in this Section. The governing body of each party hereto has determined that duration to be reasonable.

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- D. Survival. Sections III (E) (G) and (H) Agreement shall survive termination for the purposes of resolving the apportionment and payment of any Unanticipated Expense which may become due after termination or any amount due and unpaid at the time of termination. All obligations that are still executory on both sides are discharged but any right based on prior breach or performance survives. The making of this Agreement shall not affect the validity of the "Survival" clause (contained in section VII.D) of the First Amendment to Interlocal Cooperation Agreement 911 Communications.
- E. Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Agreement shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
- F. Entire Agreement. Except as noted in Section II, ~~paragraph A~~, this Agreement shall constitute the entire understanding between the City and the County and shall supersede all prior understandings and agreements relating to the subject matter hereof.
- G. E-Verify Compliance. Each of the parties covenants that if it enters into any subcontracts in order to perform any of its obligations under this contract, it shall require that the contractors and their subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. In this E-Verify Compliance section, the words contractors, subcontractors, and comply shall have the meanings intended by applicable provisions of NC Gen. Stat. Chapters 153A and 160A.
- H. Appointment of Personnel. The City Manager shall designate persons to carry out the City's obligations under this Agreement. The County Manager shall designate persons to carry out the County's obligations under this Agreement.
- I. Principles of Interpretation and Definitions. Unless the context requires otherwise -- (1) The singular includes the plural and the plural the singular. . References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument.

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J. No Third Party Rights Created. This Agreement is intended for the benefit of only the City and the County.

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K. Notice. (a) All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

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To the City:

[Insert name and department]

City of Durham

101 City Hall Plaza

Durham, NC 27701-3329

The fax number is (919) _____.

Email:

To the County:

[Insert name and address]

The fax number is _____.

Email:

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Section V. Operations Board

A. There is hereby established an Administrative Body to be known as the Durham Emergency Services Operations Board (hereafter "Operations Board"). The Operations Board shall establish by-laws and procedures which may be amended from time to time subject to the review and approval of the Managers. The ~~mission of the Durham Emergency Services Operations Board is to deliver improved service to the public and membership~~ shall consist of ~~fourteen (14)~~ persons selected as follows:

1. Three ~~(3)~~ members shall be appointed by the City Manager to represent the Durham City Police Department, Durham City Fire Department, and City Manager's Office all of which should hold high-ranking command positions.

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2. Three ~~(3)~~ members shall be appointed by the Durham County Manager to represent the Durham County Emergency Medical Services Department, Office of the Durham County EMS Medical Director, and County Manager's Office all of which should hold high-ranking command positions.
3. One ~~(1)~~ member shall represent the Durham County Volunteer Fire Departments, and will be the current president of the Durham County Fire Chief's Association.
4. One ~~(1)~~ member shall be the Director of Emergency Communications.
5. One ~~(1)~~ member shall be the Director of the City/County Department ~~Director~~ of Emergency Management.
6. Two ~~(2)~~ members shall be appointed by the Sheriff of Durham County, one which should hold a high-ranking command position and one should hold a management position from the Communications section.
7. One member ~~(1)~~ shall be appointed by the Duke University Police Department and should hold a high ranking position in that department.
8. One member ~~(1)~~ shall be appointed by N.C.C.U Police Department and should hold a high ranking position in that department.
9. One member ~~(1)~~ shall be the manager of the City of Durham's Communication Maintenance Division.

B. Duties of Operations Board:

1. To review and comment on activities and policies concerning the delivery of public safety operations for the City/County of Durham.
2. To establish subcommittees to provide analysis on ~~such matters including but not limited to,~~ system changes, acquisition of new or replacement equipment, operational and administrative policies, ~~and~~ formulation of a five year

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comprehensive plan for infrastructure, and other matters related to ; to. ~~Establish~~ a subcommittee dedicated to ~~Policies~~ policies and the improvement of processes that will bring recommendations to the Operations Board for approval by a majority vote and adhered to by all members. The policies will be forwarded to the appropriate City Manager or County Manager or both, as appropriate, City/County Managers for implementation as necessary.

C. Operations Board Organization.

1. A Chairperson and Vice Chairperson shall be selected by its members and shall have such responsibilities as may be conferred ~~upon him or her~~ by the Rules of Procedure or Bylaws.
2. ~~Consistent with applicable laws and the Rules of Procedure, t~~ The Operations Board shall:
 - a. Meet ~~regularly at such time and place as the Operations Board may determine but as a minimum on a quarterly basis~~ at least once every three months.
 - b. ~~Hold special or emergency meetings when deemed necessary and in accordance with the Rules of Procedure.~~
 - e.b. Provide for the keeping of minutes of its meetings.
 - ii. A Q ~~quorum shall mean a majority of the members, excluding vacancies. attendance by a minimum of fifty percent (50%) of the voting members plus one in order to conduct a meeting.~~

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D. Open Meetings and Public Records.

The Operations Board will comply with applicable is an Administrative Body and as such, is not subject to the requirements of Chapter 132 and Article 33C of Chapter 143 of the General Statutes of North Carolina.

Section VI. Property

- A. Property, which includes real and personal property, purchased or owned by the City prior to January 1, 2008, and used by the Department shall remain the property of the City and shall not be subject to the provisions of Paragraphs B and C of this Section. Any property ~~(real or personal)~~ acquired pursuant to this Agreement, excepting that acquired for use by the County for use by the Sheriff's Office for the separate communications facility as provided by III.A., shall be owned by the City ~~and title to such property shall be held by the City~~. Property acquired by the County for use by the Sheriff's Office for the separate communications facility as provided by III.A shall be owned by the County and not subject to Subsections B and C. ~~and title to same shall be held by the County.~~
- B. In the event this Agreement is terminated, the City shall purchase the County's interest in such property acquired pursuant to this Agreement and held by the City by making payment ~~pay~~ to the County an amount equal to the County's percentage part of the Modified Apportionment Ratio in place at the time of ~~termination~~ termination times the net depreciated value of such property. ~~held by the City~~ (unless such property is sold under Paragraph Subsection C of this Section, in which case the provisions of said Paragraph C shall control.)
- C. ~~As an alternative to~~ Subsection B, in the event this Agreement is terminated, the City may sell any such property acquired pursuant to this Agreement and held by the City. The choice of which property will be sold is in the City discretion. The proceeds of any such sales, after expenses of sale, shall be divided by the City and County in accordance

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with the Modified Apportionment Ratio in place at the time of
termination~~termination. This subsection and subsection B above shall not
apply to property acquired by the County for use by the Sheriff's Office.~~

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IN WITNESS WHEREOF, the City and County have ~~executed~~authorized this instrument
pursuant to authority duly made by the City Council and the Board of County
Commissioners, respectively. Amendment to the 911 Interlocal Agreement to be
executed and attested by their undersigned officers, to be effective _____.

CITY OF DURHAM

BY _____

Thomas J. Bonfield, City Manager

ATTEST:

(SEAL)

D. Ann Gray, City Clerk

ATTEST: _____ CITY OF DURHAM

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By:

COUNTY OF DURHAM

BY _____

Wendell M. Davis, County Manager

ATTEST:

*Interlocal Agreement for the 911 Emergency Communications Center and the City/County Department of
Emergency Communications, between the City of Durham and the County of Durham*

(SEAL)

Michelle Parker-Evans, Clerk to the Board

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